

REMARKS

The application has been amended and is believed to be in condition for allowance.

Claims 12-17 have been cancelled.

Claims 21-26 are new.

Claims 1-20 were rejected as obvious over HELEY 5,067,486 in view of MIKLAUS et al. 5,209,722.

Applicant respectfully disagrees.

The Official Action essentially acknowledges that HELEY does not disclose the recited primary fastening means arrangement. The fastening means is recited as being operable to draw the side flaps together, where each side flap is recited as having "at least two apertures positioned to form two pairs of adjacent apertures when the side flaps are pulled together".

The recitation continues with "at least two first straps, each first strap able to engage with one side flap and ... passed through a corresponding one of the two apertures in the other side flap and returned to the first side flap for engagement therewith".

The new claims add that at least one of the two pairs of adjacent apertures is positioned to be adjacently above the user's foot, when the support is in use. Also, other new claims recite a first pair of apertures at the user's leg and a second pair of apertures above the user's foot, the second pair of

adjacent apertures adjacent an upper surface of the user's foot.

See Figure 3 for support of these new recitations.

Official Action, page 2, last paragraph acknowledges the recited two aperture per flap defining two pairs of adjacent apertures is not taught by HELY.

For this missing feature, MIKLAUS is offered.

But HELY and MIKLAUS are non-analogous to each other. HELY discloses an ankle stabilizing appliance in the form of a laced and strapped ankle stabilizing arrangement. See the Abstract teaching that each of the stabilizing straps is adapted to extend across and under the foot of the wearer, thus stabilizing the ankle.

In contrast, MIKLAUS discloses the principle of securing the brace to the user's lower leg part, while leaving the foot itself essentially free (save to the extent that the foot rests on the brace base).

Indeed, see the pivoting arrangement of 52, 54, 56 that provides for the MIKLAUS brace base to pivot with respect to the leg brace portion. There is no teaching in MIKLAUS as to stabilization in the ankle region itself.

The straps of MIKLAUS are not intended, or taught, to draw a foot and ankle support to support the ankle.

Also, see that MIKLAUS is comparatively complex. MIKLAUS requires four straps (see Figures 3-4) and without four straps does not operate.

Further, the apertures in which these four straps operate are functionally different from HELY. There is no teaching in MIKLAUS to use the apertures and four straps so as to provide an initial tightening of the boot to enable the stabilization of the ankle, i.e., to enable the stabilizing straps to be effective in their use.

Since these two references are in different, non-analogous fields, the use of MIKLAUS in making an obviousness rejection is improper, as one of skill in considering HELY and ankle stabilization, would not look to the field of MIKLAUS and would have no basis for investigating MIKLAUS for inspiration relating to the problem addressed by HELY.

See MPEP §2141.01(a). As stated by the Federal Circuit in Wang Laboratories Inc. v. Toshiba Corp., 26 USPQ2d 1767 (Fed. Cir. 1993), a reference is reasonably pertinent if it is one which, because of the matter with which it deals, logically would have commanded itself to an inventor's attention in considering his problem. One of skill considering the HELY device would have not viewed MIKLAUS as being reasonably pertinent in dealing with ankle stabilizing. Accordingly, withdrawal of the §103 rejection is solicited.

Further, since MIKLAUS teaches straps only above the ankle, even if MIKLAUS were combined with HELY (which applicant denies is proper), the MIKLAUS teaching would be to provide

straps/slots above the ankle and not adjacent the foot of the user as recited in the new claims.

Therefore, both the independent claims and the newly added claims are believed non-obvious.

In that the recited structure of the invention is non-obvious over the applied art, applicant believes that the claims are patentably distinguishable over the prior art. Accordingly, reconsideration and allowance of all the pending claims are respectfully requested.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

YOUNG & THOMPSON



Roland E. Long, Jr., Reg. No. 41,949
745 South 23rd Street
Arlington, VA 22202
Telephone (703) 521-2297
Telefax (703) 685-0573
(703) 979-4709

REL/lrs